

CRIMINAL COST: Neither State, County or Prosecuting Attorney's Office are liable for cost when a person charged with a felony on complaint of prosecuting attorney, is discharged by examining official, or at request of Prosecuting Attorney.

June 11, 1937

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Honorable Mark W. Wilson
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Sir:

This department is in receipt of your letter of June 3, 1937, in which you request an opinion as follows:

"The prosecuting attorney signs a complaint on his own information and belief, charging a defendant with a felony, and the defendant is arrested, but before the preliminary hearing the prosecuting attorney decides the defendant is not guilty and has the justice of the peace dismiss the charge. Is the justice entitled to make a cost bill and collect his fees and the Sheriff's? If so who would be liable for the costs the State or County?"

Section 3832 Revised Statutes Missouri 1929, is as follows:

"If a person, charged with a felony, shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor or person on whose oath the prosecution was instituted, and the officer taking such examination shall enter judgment against such person for the same, and issue execution therefor immediately; and in no case shall the state or county pay the costs."

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The last clause of this section provides, as you will notice, as follows:

"And in no such case shall the state or county pay such costs."

In *Cummings vs. Kansas City Public Service Company*, 66 S.W. (2d) 920, 1. c. 931, the court said:

"It is, of course, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction."

This is the situation here. Section 3832 R.S. Mo. 1929, provides that where a person charged with a felony is discharged by the examining officer, the prosecutor or person on whose oath the prosecution was instituted shall pay the costs and in no such case shall the state or county pay said costs. The fact that the Prosecuting Attorney requested the dismissal of said charge, is of the same effect as the examining officer discharging said person.

Section 3510 Revised Statutes Missouri 1929 concerning costs in criminal prosecutions is as follows:

"When the information is based on an affidavit filed with the clerk or delivered to the prosecuting attorney, as provided for in section 3505, the person who made such affidavit shall be deemed the prosecuting witness, and in all cases in which by law an indictment is required to be indorsed by a prosecutor, the person who makes the affidavit upon which the information is based, or who verifies the information, shall be deemed the prosecutor; and in case the prosecution shall fail from any cause, or the defendant shall be acquitted, such prosecuting witness or prosecutor shall be liable for the costs in the case not otherwise adjudged by the court, but the prosecuting attorney shall not be liable for costs in any case."

Honorable Mark W. Wilson

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Therefore, it is the opinion of this department that when a person charged with a felony on complaint of Prosecuting Attorney is discharged by the examining officer, or the charge is dismissed at the request of the Prosecuting Attorney, that neither the state, county nor Prosecuting Attorney are liable for the costs which have accrued in said case, and that the officers concerned are not entitled to collect any costs in such case.

I am enclosing a copy of an opinion upon this subject written to B.G. Dilworth, Prosecuting Attorney of Dent County on April 8, 1937, by the Honorable Russell C. Stone, Assistant Attorney General.

Respectfully submitted,

A. R. HAMMETT, Jr.,
Assistant Attorney General

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General

ARE:MR
Enclosure.